IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 667 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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MADHAVJIBHAI DHANJIBHAI PATEL

Versus

UNION OF INDIA

Appearance:

1. Special Criminal Application No. 667 of 2001

MR BM MANGUKIYA for Petitioner No. 1

MS BELA A PRAJAPATI for Petitioner No. 1

MR BB NAIK for Respondent No. 1-2

MR VM PANCHOLI, LD ADDL.PUBLIC PROSECUTOR for Respondent No. 3

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 24/04/2002

ORAL JUDGEMENT

#. Rule. Mr.B.B.Naik, learned advocate waives service of rule on behalf of respondents No.1 and 2.

Mr.V.M.Pancholi, learned APP waive service of rule on behalf of State of Gujarat.

#. The learned advocate for the petitioner had filed draft amendment on the earlier date. After hearing the learned advocates for the parties the said application is allowed and the petitioner herein is permitted to amend the memo of petition in terms of the draft amendment application.

#. During the course of hearing it is noticed that when an exigency of present nature arises the proper course is to direct a stay of the proceeding as has been said in case of Commissioner of Income-Tax vs. Bhupen Champaklal Dalal, reported in Income Tax Reporters (Vol.248) ITR 830. There it was laid down that the High Court was justified in granting interim stay.

#. Keeping in view the said decision it would be proper to direct that the proceeding in question be stayed till the final disposal of the matter pending before the Chief Judicial Magistrate till the appellate authority decides the matter as it has been represented that the petitioner has approached the said authority for the redressal of his grievance.

#. For the foregoing reasons, it is directed that the proceeding of Criminal Case No.751/1997 pending before the learned Chief Judicial Magistrate at Surat shall be stayed till the final disposal of the proceeding before the Settlement Commissioner in Settlement Case No.10/S/078/96-97/IT of 1997 in terms of Commissioner of Income Tax V/s. B.C. Dalal reported in 2001 I.T.R. 830.

#. It appears from the provision made in Sub Section (1) of Section 245-H, 1961, that the Settlement Commissioner has power to grant immunity from prosecution and, therefore, the said prayer can be made there and if it is made there then naturally the said authority will deal with and decide the same in accordance with law.

#. In above view of the matter, this petition is ordered to be disposed of accordingly. Rule is made absolute as above. D.S. is permitted.

(D. P. BUCH, J.)
kks